



AGREEMENT FOR PROFESSIONAL SERVICES

Project: Water/Wastewater
Certified Operations

Stockwell Project No.: 20219

This Agreement for Professional Services (hereinafter "Agreement") is made and entered into this 3rd day of September, 2020, by and between **STOCKWELL ENGINEERS, INC.**, 801 North Phillips Avenue, Suite 100, Sioux Falls, SD 57104, (hereinafter "Engineer") and **CITY OF LENNOX**, (hereinafter "Client"), for the services described under the Scope of Services (the "Services").

CLIENT: City of Lennox

Address: P.O. Box 228 | Lennox, SD 57039-0228

Phone No.

Fax No.

Scope of Services: Client hereby agrees to retain Engineer to perform the Services as outlined in the attached *Proposal for Professional Services* dated September 3, 2020. The purpose of this agreement is to provide the appropriate level of operator certification for the Client, as is required by the South Dakota Department of Environment and Natural Resources. Current staff employed by the Client do not possess the required level of certification, and a contracted operator is a necessity until such time that current or future employees are granted the appropriate licensure by the DENR.

Schedule: Services shall be performed according to the schedule outlined in the attached *Proposal for Professional Services* dated September 3, 2020. The period of service for the Project will be from 9/1/2020 to 12/31/2021. Stockwell requires a 90-day written termination notice prior to the end of the service period. If written notice is not provided a negotiation of continued service will be required.

Compensation: In consideration of these Services, the Client agrees to pay Engineer compensation as follows:

Basic Compensation: Lump Sum \$102,750.00 excluding sales tax

Additional Services Multiplier: 1.0 times the expense incurred by the Engineer

Reimbursable Expense Multiplier: 1.0 times the expense incurred by the Engineer

The attached Proposal for Professional Services and Standard Terms and Conditions are made a part hereof and incorporated into this Agreement.

IN WITNESS WHEREOF, this Agreement is accepted on the date last written below, subject to the terms and conditions above stated and the provisions set forth herein.

CLIENT

STOCKWELL ENGINEERS, INC.

Signed: _____

Signed: _____

Name (printed): _____

Name (printed): Jon Brown, P.E.

Title: _____

Title: President

Date: _____

Date: _____

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801 N. Phillips Ave. Suite 100, Sioux Falls, SD 57104

stockwellengineers.com / 605.338.6668

Proposal for Professional Services

City of Lennox
Water/Wastewater Certified Operations



September 3, 2020

Mr. Nathan Vander Plaats
City of Lennox
P.O. Box 228
Lennox, SD 57039-0228
NVP@cityoflennoxsd.com

Re: Proposal for Professional Services
Water/Wastewater Certified Operations

Dear Nathan,

Thank you for your consideration of our proposal. Stockwell Engineers, Inc. (Stockwell) proposes to provide professional services for Water/Wastewater Certified Operations (the "Project"). Stockwell's services will be provided in the manner described in this Proposal. The **City of Lennox** is referred to as the "Client."

Acknowledgments

Client: City of Lennox

Project: Water/Wastewater Certified Operations

System Information:

City of Lennox WWTF
Permit No: SD0021768
PO Box 228
220 S Main
Lennox, South Dakota 57039

Location: Approximately ½ mile southwest of Lennox in the NE 1/4, S6, T98N, R51W, Lincoln County.

Compliance Liability: Client shall, except when acting as directed by Stockwell, maintain full liability for compliance with all Local, State and Federal laws and regulations related to the operation of the facilities.

Purpose

The purpose of this agreement is to provide the appropriate level of operator certification for the Client, as is required by the South Dakota Department of Environment and Natural Resources.

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Current staff employed by the Client do not possess the required level of certification, and a contracted operator is necessary until such time that current or future employees are granted the appropriate licensure by the DENR.

System Description

The Lennox drinking water is obtained post-treatment via connection with the Lewis and Clark Regional Water System (LCRWS). The Client is not responsible for any water treatment prior to distribution, as such treatment is the responsibility of LCRWS. The system provides drinking water through 1062 service connections.

The Lennox wastewater system provides sanitary sewer service to residents and businesses through 1046 service connections. The collection system includes four (4) lift stations throughout the community, including a main lift station and forcemain connecting the system to the Wastewater Treatment Facility.

The Lennox Wastewater Treatment Facility is a Class III Sequencing Batch Reactor treatment facility. The facility also includes:

- Two (2) treatment basins
- Aerobic digestion
- Three (3) drying beds
- Three (3) emergency ponds

Scope of Services

Work listed below will be completed by Stockwell unless otherwise stated. Work not explicitly listed shall be considered an additional service. The scope is organized into the following tasks.

Certified Operation Tasks

1. Directly in charge of all operations and maintenance of the water and wastewater systems, including wastewater treatment.
2. Review collection and submission of all water system samples.
3. Provide recommendations and oversight of periodic exercising of valves and hydrants.
4. Review chlorine residual measurements and maintain the system within regulatory chlorine residual limits.
5. Review fluoride residual measurements and maintain the system within regulatory fluoride residual limits.
6. Review collection and submission of all wastewater samples.
7. Discharge effluent in accordance with NPDES Permit.
8. Oversee regular sampling of all wastewater discharges.
9. Be on-site for all federal, state, or local regulatory agency inspections.
10. Maintain efficient system operation and maintenance.
11. Be available for emergency consultations and technical assistance.
12. Be on-site a minimum of two (2) days per week for at least four (4) hours per day.

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13. Maintain valid operator certification during the term of this agreement.

Response Time

Stockwell agrees to provide emergency response within four (4) hours of notification. Response will be either on-site or via telephone.

Qualifications

Stockwell Engineers, Inc. offers the following Certified Operators:

Name:	<u>Steve Dravland</u>	<u>Greg Anderson</u>
Operator Number:	125	14
Water Treatment:	Class II	Class IV
Water Distribution:	Class II	Class III
Wastewater Treatment:	Class IV	N/A
Wastewater Collection:	Class III	N/A

Additional Services

If authorized in writing by Client, Stockwell will furnish additional services over and above the amount set forth by this agreement. Compensation for additional services will be at Stockwell's current hourly rates or otherwise as mutually agreed upon by both parties.

Period of Service

The period of service for the Project will be from **September 1, 2020 to December 31, 2021**. Stockwell requires a 90-day written termination notice prior to the end of the service period. If written notice is not provided a negotiation of continued service will be required. It is agreed that this is subject to the governing body of the Client appropriating funds for purposes of this Agreement.

Compensation

Compensation for services provided by Stockwell pursuant to this Proposal will be on a lump sum basis, invoiced monthly, excluding sales or excise tax as outlined below. Client must make payments in accordance with Section B of the Standard Terms and Conditions attached to this Proposal.

- Year 2020 (calendar year lump sum) \$25,500.00
- Year 2021 (calendar year lump sum) \$77,250.00

The level of effort required of Stockwell to accomplish the services described in this Proposal may be affected by factors beyond Stockwell's control. Therefore, if it appears at any time compensation for services rendered will exceed the maximum compensation amount, Stockwell and Client agree Stockwell will not perform additional services or be entitled to additional compensation in excess of

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the maximum compensation amount until Stockwell and Client have agreed upon additional compensation for services to be rendered and Client has available funds to pay for Stockwell's services.

Sincerely,

STOCKWELL ENGINEERS, INC.

A handwritten signature in black ink, appearing to read 'Jon Brown', written over the company name.

Jon Brown, P.E.
President

STANDARD TERMS AND CONDITIONS

A. Commencement of Services.

The Services will be commenced immediately upon receipt of the signed Proposal (the "Agreement"). If after commencement of the Services, the Project is delayed for any reason beyond Stockwell's control for more than 60 days, the terms and conditions contained herein will be subject to revision by Stockwell. Subsequent modifications to this Agreement must be in writing and signed by the parties to the Agreement.

B. Fees and Payment.

1.0 Invoices. Compensation for Services will be as designated in this Agreement. Services based on Stockwell's standard hourly rates will be those rates currently in effect at the time the Services are rendered. Hourly rates are subject to change upon 30 days' written notice, including during the term of this Agreement.

2.0 Payment Due. Stockwell will deliver to Client invoices monthly. Payment will be due within 30 days after the date of the invoice describing the Services performed and expenses incurred during the preceding month.

3.0 Failure to Pay. Client agrees timely payment is a material term of this Agreement and failure to make timely payment as agreed will constitute a breach hereof. In the event payment for Services rendered has not been made within 30 days from the date of the invoice, Stockwell may, after to Client giving 7 days' written notice, and without penalty or liability of any nature, and without waiving any claim against Client, suspend all Services to be performed. Upon receipt of payment in full for Services rendered, plus interest charges, Stockwell will continue with the Services, but all deadlines for Stockwell's performance of services will be extended for a period of time equal to the delay in Stockwell's receipt of payment. Payment of all compensation due Stockwell pursuant to this Agreement will be a condition precedent to Client using any of Stockwell's Services' work product under this Agreement.

4.0 Interest on Late Payments. In order to defray carrying charges resulting from delayed payments, interest at the rate of 1.5% per month will be added to the unpaid balance of each invoice. The interest period will commence 45 days after the date of the original invoice and will terminate upon date of payment. Payments will be first credited to interest and then to principal.

C. Owner's Responsibilities.

1.0 Client to Provide Information. Unless otherwise provided for under this Agreement, Client will provide information in a timely manner regarding requirements for and limitations on the Project, including Client's Program objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from Stockwell, Client must furnish the requested information as necessary and relevant for Stockwell to evaluate, give notice of or enforce lien rights.

2.0 Client to Provide Contractors. Client will furnish the services of a contractor who along with Client will be responsible for creating the overall Project Schedule. Client will adjust the Project Schedule, if necessary, as the Project proceeds.

3.0 Client to Provide Representative. Client will identify a representative authorized to act on Client's behalf with respect to the Project. Client will render decisions and approve Stockwell's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of Stockwell's Services.

4.0 Client to Provide Notice. Client will provide to Stockwell prompt written notice if Client becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in Stockwell's instruments of service.

D. Miscellaneous Provisions.

1.0 Insurance/Indemnification/Risk Allocation

1.1 Insurance/Limitation of Stockwell's Liability. Stockwell will maintain the following insurance coverages.

- (a) Worker's compensation insurance pursuant to state law.
- (b) Business automobile insurance covering claims for injuries to members of the public and/or damages to property of others arising from use of motor vehicles, including onsite and offsite operations, and owned, non-owned, or hired vehicles, with a combined single limit of \$1,000,000.
- (c) Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any covered negligent act or omission

of Stockwell with limits of not less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate.

- (d) Professional liability insurance of \$1,000,000 per occurrence and in the aggregate.

1.2 Professional Liability. Stockwell agrees to indemnify and hold Client harmless from and against claims, losses, damages, expenses, costs, including reasonable attorney's fees and expenses, but only to the proportionate extent caused by the negligence of Stockwell.

1.3 Hazardous Materials. Client understands and agrees Stockwell has not created nor contributed to the creation or existence of any types of hazardous or toxic wastes, materials, chemical compounds, or substances, or any other type of environmental hazard or pollution, whether latent or patent, at Client's premises, or in connection with or related to the Project with respect to which Stockwell has been retained to provide Services. The compensation to be paid Stockwell for Services is in no way commensurate with, and has not been calculated with reference to, the potential risk of injury or loss which may be caused by the exposure of persons or property to such substances or conditions.

1.4 No Governmental Action Liability. Stockwell will not be liable for damages arising out of or resulting from the actions or inaction of government agencies, including, but not limited to, permit processing, environmental impact reports, general plans and amendments thereto, zoning matters, annexations or consolidations, use or conditional use permits, and building permits.

1.5 No Project Liability. Notwithstanding any provisions in this Agreement to the contrary, if the Project involves construction, as that term is generally understood, and Stockwell does not provide Services during construction, including, but not limited to, observation, site visits, shop drawing review, and design clarifications, Stockwell shall have no responsibility therefore.

2.0 Documents. Notwithstanding the foregoing, all computer programs, work product, inventions, patents, copyrights, software, and other like data developed during the course of the Project, are and will remain Stockwell's sole property.

2.2 Environmental. Environmental Audit/Site Assessment reports are prepared for Client's use only and Stockwell shall bear no liability for any reuse of the Environmental Audit/Site without Stockwell's written consent.

Nothing contained in this Agreement may be construed or interpreted as requiring Stockwell to assume the status of a generator, storer, transporter, treater, or disposal facility as those terms appear within the Resource Conservation and Recovery Act, 42 U.S.C.A. §6901 et seq., as amended, or within any state statute governing the generation, treatment, storage, and disposal of waste.

3.0 Injury to Workers on Project. Client agrees Stockwell will be named an Additional Insured on construction contractors' insurance policy for commercial general liability insurance, and Client agrees to insert into all contracts for construction between Client and construction contractors a provision requiring the construction contractors to defend, indemnify and hold harmless both Client and Stockwell from any and all actions arising out of the construction Project, including, but not limited to, injury to or death of any worker on the job site, not caused by the sole negligence of Client or Stockwell.

4.0 Probable Construction Cost Opinions. Any opinion of probable construction costs for the Project considered and designed under this Agreement will be prepared by Stockwell through the exercise of its experience and judgment in applying presently available cost data, but it is recognized Stockwell has no control over the cost of labor and materials, the construction contractors' methods of determining prices, competitive bidding procedures, market conditions, and unknown field conditions. Stockwell cannot and does not guarantee proposals, bids, or the Project construction costs will not vary from Stockwell's opinion of probable construction costs.

5.0 Site Visits. Visits to the construction site and observations made by Stockwell as part of the Services during construction under this Agreement will not make Stockwell responsible for, nor relieve the construction contractors of the obligation to conduct comprehensive monitoring of the work sufficient to ensure conformance with the intent of the contract documents, will not make Stockwell responsible for, nor relieve the construction contractors of the full responsibility for all construction means, methods, techniques, sequences, and procedures necessary for coordinating and completing portions of the work under the construction contracts, and will not relieve the construction contractors of the obligation

to provide all safety precautions incidental thereto. Such visits by Stockwell are not to be construed as part of Stockwell's observation duties of the Project site.

improvements or their locations, and the information upon which Stockwell and the consultant rely may contain errors or may not be complete.

- 6.0 On-Site Observation.** When Stockwell provides on-site observation personnel as part of the Services during construction, the on-site observation personnel will make reasonable efforts to advise Client of observed defects and deficiencies in the contractors' work, and to help determine if the provisions of the Contract Documents are being fulfilled. Their day-to-day observation will not, however, cause Stockwell to be responsible for those duties and responsibilities which belong to the construction contractors, including, but not limited to, full responsibility for the means, methods, techniques, sequences, and progress of construction, and the safety precautions incidental thereto, and for performing the construction work in accordance with the Contract Documents.
- 7.0 Right of Entry.** Client must provide for entry to the Project site for Stockwell's agents, employees, contractors and consultants and for all necessary equipment.
- 8.0 Termination.** Either party may, by ninety (90) days written notice to the other, terminate this agreement in whole or part at any time. Upon receipt of notice, a party shall immediately discontinue all services affected, unless the notice directs otherwise. If the termination is for the convenience of the Client, no amount shall be allowed for Stockwell for unperformed service, but Stockwell shall be compensated for services rendered through the date of termination notice.
- 9.0 Default and Remedies.**
9.1 Client's Default. If Client breaches any of the terms of this Agreement, Stockwell, in addition to other rights set forth in Section 1.3 above, will give Client written notice of default setting forth the default. If Client has not remedied the default within 7 days of the date of default, Stockwell may terminate this Agreement and proceed with any or all remedies provided under applicable law.
9.2 Stockwell's Default. If Stockwell breaches any of the terms of this Agreement, Client will give Stockwell written notice of default setting forth the default. If Stockwell has not remedied the default within 7 days of the date of default, Client may terminate this Agreement and proceed with any or all remedies provided under applicable law.
- 10.0 Jurisdiction.** This Agreement is governed by the laws of the State of South Dakota and any action at law or other judicial proceeding arising from this Agreement must be instituted only in Minnehaha County Circuit Court, Sioux Falls, South Dakota, and may not be removed to federal district court, nor may venue be changed to any other circuit court.
- 11.0 Waiver.** Stockwell's waiver of any term, condition, or covenant or breach of any term, condition, or covenant, will not constitute a waiver of any other term, condition, or covenant, or the breach thereof.
- 12.0 Entire Agreement.** This Agreement, and its attachments, constitutes the entire understanding between Client and Stockwell relating to services to be provided by Stockwell and supersede any prior or contemporaneous agreements, promises, negotiations, or representations not expressly set forth herein. Subsequent modifications or amendments to this Agreement must be in writing and signed by the parties to this Agreement. The foregoing notwithstanding, if Client, its agents, officers, directors, employees, contractors and consultants request Stockwell perform extra Services pursuant to this Agreement, Client must pay for the additional Services even though an additional written agreement is not issued or signed.
- 13.0 Successors and Assigns.** All of the terms, conditions and provisions of this Agreement will include and be for the benefit of and be binding upon the parties and their respective successors and assigns; provided, however, no assignment of this Agreement may be made without written consent of the other party to this Agreement.
- 14.0 Severability.** If any provision of this Agreement is declared invalid, illegal or incapable of being enforced by any court of competent jurisdiction, all of the remaining provisions of this Agreement will nevertheless continue in full force and effect, and no provision will be deemed dependent upon any other provision unless so expressed herein.
- 15.0 Force Majeure.** Stockwell will not be liable to Client for delays in performing its obligations, or for the direct or indirect cost resulting from delays that may result from acts of nature, governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond Stockwell's reasonable control. Each party will take reasonable steps to mitigate the impact of any force majeure event. Stockwell will be entitled to an adjustment to the schedule and its compensation under this Agreement to the extent required by the force majeure event.
- 16.0 Underground Utilities.** If included as a Service under this Agreement, Stockwell or its authorized consultant will conduct research in Stockwell's or the consultant's professional opinion is necessary, and will prepare a plan indicating the locations intended for subsurface penetrations with respect to assumed locations of underground improvements. These Services will be performed in a manner consistent with the ordinary standard of care. Client recognizes the research may not identify all underground